

BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Appeal No. 12142, of Christian Embassy, Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator that the Christian Embassy, Inc., is not a church within the meaning of the Zoning Regulations, with the affected premises located at 2000 - 24th Street, N.W., (Square 2503, Lot 13).

HEARING DATE: May 19, 1976

DECISION DATE: May 19, 1976 (from the bench)

FINDINGS OF FACT:

1. The property which is the subject of this appeal is located in an R-1-B district.

2. The Zoning Regulations permit a one-family detached dwelling, church or other place of worship and an embassy among other uses, as a matter of right in an R-1-B District.

3. Prior to May, 1975, a contractor made application to the Government of the District of Columbia, on behalf of Mr. Rolfe McCollister, owner of the property, for permission to install a second kitchen on the third (3rd) floor of the subject premises at 2000 - 24th Street, N.W., Mr. McCollister met with James J. Fahey, Zoning Administrator, at the end of April, 1975, to discuss the intended use of the premises. Mr. Fahey also obtained from the Sheridan-Kalorama Neighborhood Council copies of letters which Mr. McCollister sent to the Council setting out the intended use of the premises.

4. On May 14, 1975, Mr. Fahey wrote to Mr. McCollister informing him that the application for the permit to install the kitchen was denied as the intended use is not in compliance with the Zoning Regulations. Mr. Fahey's letter stated in part:

"On the basis of the intended occupancy described in these letters and our conversations at my office, I find that the proposed use, for purposes of the D.C. Zoning Regulations, is not a single family residence, or other permitted R-1-B use, as contemplated by our Zoning Regulations.

Therefore, this constitutes notice that the intended use will not be in compliance with the Zoning Regulations."

5. On May 23, 1975, Mr. Fahey again wrote to Mr. McCollister, reaffirming his letter of May 14, 1975. The May 23rd letter stated in part:

"If you feel my decision is in error, you may appeal same to the Board of Zoning Adjustment under Section 8102 of the D.C. Zoning Regulations. An application is enclosed for your convenience".

6. Subsequent to Mr. Fahey's letters, ownership of the property was transferred to the Christian Embassy, Incorporated, of which Mr. McCollister is the President.

7. The Christian Embassy, Incorporated was incorporated as a church and proceeded to remodel the premises to suit this purpose. No building permits were ever issued for this remodeling, which may not have required a permit.

8. Mr. James E. Bess, Deputy Zoning Administrator, writing for Mr. Fahey, informed the Christian Embassy, Inc., by letter dated February 11, 1976, that its proposed use of the property was in violation of his prior rulings. This letter stated in part:

"This, therefore, is formal notice that the corporation's use of the premises, including specifically the proposed reception of February 21st, and the proposed series of meetings scheduled to commence on February 22nd, would be in violation of the May 14th and May 23rd, 1975, rulings of this office and of the Zoning Regulations, and would be unlawful under the Code of the District of Columbia. Unless the use of the premises is brought into compliance with the Zoning Regulations, appropriate enforcement action will be pursued without further notice to you."

9. On February 13, 1976, the Sheridan-Kalorama Neighborhood Council instituted action before the Superior Court to restrain and enjoin the applicant from using the property in violation of the Zoning Administrator's rulings.

10. On February 18, 1976, the Christian Embassy, Inc., filed an application for a certificate of occupancy for a church for the subject premises.

11. On February 19, the Christian Embassy, Inc., filed the instant appeal of Mr. Fahey's rulings, approximately nine months after Mr. Fahey's initial ruling on the matter.

12. Mr. Fahey has declined to rule on the request for certificate of occupancy until the Board decides the appeal.

13. The appellant filed a motion, dated May 18, 1976, to consolidate the present appeal with Mr. Fahey's refusal to approve the issuance of the certificate of occupancy as a church. Mr. Fahey and Mr. William Greer, Council for the Sheridan-Kalorama Neighborhood Council, opposed the motion for consolidation, Mr. Greer, on the grounds that it was premature, and Mr. Fahey on the

grounds that the February letter merely reaffirmed the prior decisions.

14. Section 4.35 of the Supplemental Rules of Practice and Procedure before the Board provides that the presiding officer at a public hearing shall have the authority to:

"Dispose of the procedural requests or similar matters, including motions to amend and to order hearings reopened or upon motions to consolidate applications or appeals for hearings".

Mr. William S. Harps, as Chairman, was the presiding officer at the May 19, 1976 hearing, and ordered that the matters should not be consolidated.

15. Mr. Greer, on behalf of the Neighborhood Council, filed a motion for the Board to dismiss the appeal on the grounds that it was not filed within a reasonable time.

16. Section 2.21 of the Supplemental Rules of Practice and Procedure before the Board governs the filing of appeals. Section 2.21 reads in part as follows:

"Any person aggrieved by any order, requirement, decision, determination or refusal made by any administrative officer or body, including the Commissioner of the District of Columbia, in the administration or enforcement of the Zoning Regulations, may file a timely appeal with the Board in such form and number as may from time to time be provided by the Board."

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the letters of the Zoning Administrator, dated May 14, 1976, and May 23, 1976, constitute a determination made by an administrative officer in the administration and enforcement of the Zoning Regulations. The Board concludes that Mr. Fahey's letters specifically put the appellant on notice that the intended use of the property was in violation of the Zoning Regulations for R-1-B districts and that the situation could be resolved by an appeal to the Board. The Board concludes that the appellant took several actions relating to its use of the property, including incorporating as a church and remodeling of the premises, prior to the filing of this appeal, and that this appeal was filed almost nine (9) months after the rulings were made and only after the Sheridan-Kalorama Neighborhood Council instituted legal action in the D. C. Superior Court. It is therefore ORDERED that the appeal


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be Dismissed as not filed in a timely manner.

VOTE: 5-0 (Leonard L. McCants, Theodore F. Mariana, Lilla
Burt Cummings, William S. Harps and William F.
McIntosh to, DISMISS).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Acting Secretary to the Board

FINAL DATE OF ORDER: _____

JUN 18 1970